IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 23.10.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.1005 of 2007

V.Kali Ammal ... Petitioner

vs.

1. The Secretary to Government,
Prohibition and Excise Dept.,
Fort St. George, Chennai-600 009.

2. The District Magistrate and
District Collector, Cuddalore District,
Cuddalore. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus directing the respondents calling for the records relating to the order of detention passed by the second respondent in C3/DO/24/2007 dated 27.6.2007 and set aside the same and direct the respondent to produce the body of the detenu namely Gnanavel before this Court (now detained at Central Prison, Cuddalore) and set him at liberty.

For Petitioner : Mr.R.Bharath Kumar
For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor.

O R D E R
(Delivered by P.D.DINAKARAN, J.)

The petitioner challenges the impugned order of detention, dated 27.06.2007, whereby, her son by name Gnanvel has been detained as 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention came to be passed by the second respondent on the basis of the ground case, complaint of which was given by one Pillai to the Inspector of Police, Cuddalore O.T. Police Station, stating that he consumed one tumbler of arrack obtained from detenu Gnanvel and

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after consumption, he felt irritation in eyes and giddiness. A case was registered in Cuddalore O.T. P.S. Crime No.268 of 2007 for offences under Sections 4(1)(i) and 4(1)(aaa) of T.N. Prohibition Act read with Section 328 IPC and subsequent to registration of the case, the detenu was arrested and the arrack was recovered in the presence of witnesses. On chemical analysis, the Doctor opined that the arrack is mixed with 3.18 mg. w/v. of atropine, a poisonous substance, and that if the arrack mixed with 2.35 mg. w/v. of atropine is consumed, apart from causing other physical ailments, it may also affect the brain and lead to loss of life if immediate treatment is not given. The order of detention is also supported with four adverse cases to the credit of the detenu for offences of similar nature.

3. In this Petition, the petitioner seeks for the issuance of a writ of Habeas Corpus to call for the records relating to the order of detention passed by the second respondent in C3/D.O./24/2007, dated 27.06.2007, set aside the same, direct the respondent to produce the body of detenu Gnanvel, now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

4. We have perused the materials available on record and considered the submissions made by the counsel appearing on either side.

5. Even at the foremost, we are hasten to observe that the edifice of the order of detention is shaken inasmuch as the authorities have pre-determined to clamp the order of detention on the detenu as could be seen from the communication, dated 19.06.2007, sent by the Deputy Superintendent of Police, Cuddalore Sub-Division, Cuddalore, to Judicial Magistrate No.II, Cuddalore. To put it elaborately, though the order of detention is dated 27.06.2007, the Deputy Superintendent of Police, in the above referred to communication dated 19.06.2007, which is available at page No.68 of the Paper Book, addressed to the Judicial Magistrate, has stated,

> " ... He (the detenu) is fit person to detain u/s.3(1) of Tamil Nadu Prevention of Dangerous Activities of Boot Leggers Act No.14 of 1982. A proposal is also under preparation to detain him under B.L. Act. ... "

Thus, it is ex facie apparent that there is a clear pre-determination of mind on the part of the authorities for detaining the detenu under Tamil Nadu Act 14 of 1982, which aspect, in our view, would go to the root of the detention order.

6. In this view of the matter, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in the

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proceedings dated 27.06.2007 against the detenu is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary to Govt., Prohibition & Excise Department,
   Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
   Cuddalore District.
3. The Superintendent, Central Prison, Cuddalore.
4. The Joint Secretary o Govt,
   Public(Law & Order) Fort St George, Chennai.
5. The Public Prosecutor, High Court, Madras.

+ One cc o Mr. R. Bharath kumar, Advocate SR 63891

SJ (co)

sg 02/11/07

HCP No.1005 of 2007.
23.10.2007.

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